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**IN THE  
COURT OF APPEALS OF INDIANA**

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TIMOTHY ROGERS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0607-CR-557
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Tanya Walton-Pratt, Judge  
Cause No. 49G01-0408-MR-145103

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**April 18, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Judge**

Timothy Rogers appeals his conviction and sentence for voluntary manslaughter as a class B felony.<sup>1</sup> Rogers raises two issues, which we restate as:

- I. Whether the evidence is sufficient to sustain his conviction for voluntary manslaughter; and
- II. Whether Rogers's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. Rogers and Judith Staggs lived together on a horse farm in Marion County. Rogers was 6'2" tall and weighed 205 pounds, while Staggs was 5'4" tall and weighed 110 pounds. At approximately 6:00 p.m. on Tuesday, March 8, 2005, Rogers and Staggs got into an argument because Rogers wanted Staggs to attend a meeting with him and Staggs refused. Rogers told Staggs, "You dumb bitch, get out of my face," grabbed Staggs by the neck, and shoved her down. Exhibits at 81. Staggs's head hit the floor with a "thud," and she did not get up. Transcript at 138. According to Rogers, he went upstairs and stayed upstairs until Friday, March 11, 2005.

At approximately noon on Friday, March 11, 2005, Rogers came downstairs, put a pillow under Staggs's head, and placed a water bottle next to her. He then went outside to take care of his horses. At approximately 2:00 p.m. on March 11, 2005, Rogers went to his neighbor's house to use the telephone. Rogers informed his neighbor that he thought Staggs was dead. The neighbor, who was a nurse, ran to Rogers's residence, and saw that Staggs was "obviously" dead. Id. at 28. When an officer arrived, Rogers was

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<sup>1</sup> Ind. Code § 35-42-1-3 (2004).

“very talkative” while waiting for other officers and the coroner to arrive. Id. at 52. Rogers claimed that Staggs had been alive the previous day. Rogers also commented to the officer, “boy, . . . they really do start to stink after a while, don’t they?” Id. at 52.

On March 12, 2005, Dr. Dean Hawley performed an autopsy on Staggs. At the time of the autopsy, Staggs’s body was “in a stage of decomposition, which included putrefaction by bacteria and mummification from air drying of the skin.” Id. at 56. He determined that Staggs had been dead for days and had died from a blunt force injury to the head. Staggs had suffered an injury to her brain and a contusion to her right posterior temporal scalp due to an impact with a surface, like a wall or the floor. Dr. Hawley also discovered an abrasion on Staggs’s neck and a bruise below her ear caused by someone grabbing her by the neck “tight enough that it would cut off the jugular veins on that side, maybe the carotid artery, too . . . .” Id. at 68. No drugs or alcohol were detected in Staggs’s blood. Dr. Hawley also discovered an older brain injury caused by Staggs falling on the back of her head. Additionally, Staggs had advanced alcoholic cirrhosis of the liver that made her “brain more susceptible to serious and fatal injury from a blunt impact.” Id. at 69. However, according to Dr. Hawley, if Staggs had received medical attention immediately after the injury, she might have survived.

The State charged Rogers with murder. Rogers testified at his bench trial, and his counsel argued that, at most, Rogers should be found guilty of involuntary manslaughter. The trial court found Rogers guilty of the lesser included offense of voluntary manslaughter as a class B felony. At sentencing, the trial court found Rogers’s criminal

history and pending criminal cases as aggravating factors. The trial court found Rogers's remorse as a mitigating factor. The trial court rejected Rogers's proposed mitigator of hardship upon Rogers's father. The trial court noted that Rogers was a "hopeless alcoholic" and that he had poor insight into his alcoholism. Id. at 206. The trial court determined that Rogers's alcoholism was not a mitigating factor. The trial court found that the aggravating and mitigating circumstances balanced and imposed the presumptive sentence of ten years in the Indiana Department of Correction.

## I.

The first issue is whether the evidence is sufficient to sustain Rogers's conviction for voluntary manslaughter as a class B felony. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

The offense of voluntary manslaughter is governed by Ind. Code § 35-42-1-3(a), which provides: "A person who knowingly or intentionally: (1) kills another human being; . . . while acting under sudden heat commits voluntary manslaughter, a Class B felony." A person engages in conduct "'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." Ind. Code § 35-41-2-2(a). A person engages in conduct "'knowingly' if, when he engages in the conduct, he is aware of a

high probability that he is doing so.” Ind. Code § 35-41-2-2(b). “Sudden heat occurs when a defendant is provoked by anger, rage, resentment, or terror, to a degree sufficient to obscure the reason of an ordinary person, prevent deliberation and premeditation, and render the defendant incapable of cool reflection.” Conner v. State, 829 N.E.2d 21, 24 (Ind. 2005).

According to Rogers, the evidence was insufficient to prove the requisite intent, i.e., that he was aware of a high probability that his actions would result in Staggs’s death. Rogers contends that he “could not have been aware of a high probability that his actions would have resulted in Staggs’ death, because his actions probably would not have resulted in death were it not for Staggs’ medical conditions.” Appellant’s Brief at 9. Rogers argues that the trial court should have found him guilty of involuntary manslaughter rather than voluntary manslaughter.<sup>2</sup>

The trial court found that Rogers was aware of a high probability that his actions would result in Staggs’s death. The trial court considered the relative strengths and sizes of Rogers and Staggs, the force Rogers used to grab Staggs’s neck, and Rogers’s failure to obtain medical treatment for Staggs after he injured her. “In deciding whether a defendant was aware of the high probability that his actions would result in the death of the victim, [the Indiana Supreme Court has] held that the duration and brutality of a

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<sup>2</sup> Involuntary manslaughter is governed by Ind. Code § 35-42-1-4(c) and provides: “A person who kills another human being while committing or attempting to commit: . . . (3) battery; commits involuntary manslaughter, a Class C felony.”

defendant's actions, and the relative strengths and sizes of a defendant and victim, may be considered.” Childers v. State, 719 N.E.2d 1227, 1229 (Ind. 1999).

Here, on Tuesday, March 8, 2005, Rogers and Staggs got into an argument when Staggs refused to drive Rogers to a meeting. At that time, Staggs was not intoxicated and was not under the influence of drugs. Rogers was 6’2” tall and weighed 205 pounds, while Staggs was 5’4” tall and weighed 110 pounds. Rogers told Staggs, “You dumb bitch, get out of my face,” grabbed Staggs by the neck, and shoved her down. Exhibits at 81. Staggs’s head hit the floor with a “thud,” and she did not get up. Transcript at 138. An autopsy revealed an abrasion on Staggs’s neck and a bruise below her ear caused by someone grabbing her by the neck “tight enough that it would cut off the jugular veins on that side, maybe the carotid artery, too . . . .” Id. at 68.

Rogers left Staggs on the floor for three days. Finally, on the afternoon of Friday, March 11, 2005, Rogers contacted the police. Rogers then repeatedly lied to officers and claimed that Staggs had been alive the night before. Rogers also commented to the officer, “boy, . . . they really do start to stink after a while, don’t they?” Id. at 52. Although Staggs’s preexisting brain injury and advanced alcoholic cirrhosis made Staggs more susceptible to a serious or fatal injury from the impact, the pathologist believed that if Staggs had received medical attention immediately after the injury, she might have survived.

Rogers, who was much larger than Staggs, grabbed her by the neck and shoved her to the floor with great force. Regardless of Staggs’s preexisting conditions, she might

have survived if Rogers had obtained medical attention for her. However, rather than obtaining medical attention for Staggs, Rogers simply left her on the floor for days. Upon calling the police, he lied about how and when Staggs was injured and made callous comments about the stench of her body. We conclude that evidence was presented that Rogers would have been aware of a high probability that his actions would result in Staggs's death. The State presented evidence of probative value from which a reasonable trier of fact could have found that Rogers knowingly or intentionally killed Staggs while acting under sudden heat. See, e.g., Heavrin v. State, 675 N.E.2d 1075, 1079 (Ind. 1996) (holding that "the jury easily could have concluded that defendant was aware of the high probability that physically fighting with [the victim] while her 'shirt was wrapped around her neck' (as defendant claims) could result in strangulation"), reh'g denied.

## II.

The next issue is whether Rogers's ten-year presumptive sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Rogers argues that his sentence is inappropriate because the trial court failed to impose a reduced sentence rather than the presumptive sentence of ten years. According to Rogers, the trial court should have placed more weight on the fact that he is an alcoholic.

Our review of the nature of the offense reveals that Rogers, who was much larger than Staggs, grabbed her by the neck and shoved her to the floor with great force. As a result of the shove, Staggs sustained a severe head injury. Rather than obtaining medical attention for Staggs, Rogers simply left her on the floor for days. Upon calling the police, he lied about how and when Staggs was injured and made callous comments about the stench of her body. The pathologist believed that if Staggs had received medical attention immediately after the injury, she might have survived.

Our review of the character of the offender reveals that Rogers has a 1992 conviction for driving while intoxicated as a class A misdemeanor. Rogers also had two pending charges at the time of this offense for failure to stop after an accident and driving while intoxicated. Rogers admitted that he is an alcoholic. In fact the trial court noted that he was a “hopeless alcoholic” and that he had poor insight into his alcoholism. Transcript at 206. Witnesses testified at sentencing that Rogers was a “mean alcoholic” and that he “went too far so many years when bruises, black eyes and many other problems from the violence started showing up on [Staggs].” *Id.* at 197, 200. Rogers’s actions in leaving Staggs lying on the floor for several days and his callous comments to the police officers are also indicative of his character.

We conclude that Rogers's alcoholism does not entitle him to a lesser sentence. After due consideration for the trial court's decision, we conclude that the ten-year presumptive sentence is not inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Dylak v. State, 850 N.E.2d 401, 410 (Ind. Ct. App. 2006) (holding that the presumptive sentence for the defendant's conviction for reckless homicide was not inappropriate in light of the nature of the offense and the character of the offender), trans. denied.

For the foregoing reasons, we affirm Rogers's conviction and sentence for voluntary manslaughter as a class B felony.

Affirmed.

SULLIVAN, J. and CRONE, J. concur